IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/08/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION.NO.39178 OF 2002
and
W.M.P.NOs.58439 & 58440 OF 2002

Ms.J. Jeyalakshmi
rep. by her father and
natural guardian,
Dr.V. Jothinathan
Virudhunagar District. .. Petitioner

-Vs-

1. State of Tamil Nadu,
rep. by its Secretary to Govt.,
Department of Health,
Fort St. George,
Chennai 600 009.

2. The Secretary of Selection Committee,
Directorate of Medical Education,
Madras Medical University,
Kilpauk, Chennai 600 006. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.S.M. Deenadayalan

For Respondents : Mr.V.R. Rajasekar
Special Govt. Pleader

:O R D E R

Something is obviously rotten in the matter relating to admission into MBBS/BDS courses in the State of Tamil Nadu, giving rise to spate of litigations every year relating to such admissions. In the scheme of things, the concern for admission on the basis of merit with adequate and appropriate opportunity for the concerned candidates appears to be the last and least important item in the agenda.

2. In order to appreciate the agony of the petitioner including the agonizing wait for getting justice, it is necessary to notice certain basic facts which are no longer in dispute. Such facts have primarily been culled out from the counter affidavit filed on behalf of the State and based on a reasonable and rational reading of the writ petition, counter affidavit, reply affidavit and the documents available on record.

3. About a year back, as usual the process of selection `for admission into MBBS/BDS through single window system had commenced for the academic year 2002-2003. As per the chart provided in the counter it appears that counseling had been done on 10.7.2002 and 19.9.2002 for free seat category. Similarly, counseling had been done for the allotment of seats against Management quota (euphemistically called as payment seats) on 10.7.2002, 27.7.2002, 3.8.2002, 19.9.2002, 25.9.2002 , and on 29.9.2002. The chart further indicates the cut-off marks for admission on various dates. The present case is concerned with the question relating to cut-off marks for admission in respect of payment seats as admittedly the marks secured by the petitioner (238.6) was way below the last cut-off mark in respect of admission against free seat. The chart indicates that on 14.10.2002, 35 students were selected for admission against payment seat and the lowest cut-off marks was 205.06. In the writ petition, the petitioner has averred and given the names of 4 persons, who were admitted, even though they had secured less marks than the petitioner. Out of four names indicated, in the counter affidavit specific denial has been made only in respect of one P.A. Sathish Babu and no specific denial has been made in respect of three others. Anyway it is apparent from the counter affidavit that a student who obtained 205.06 marks had been admitted which was far below the marks obtained by the petitioner (238.5). Soonafter such admission, the petitioner has approached this court with utmost promptitude on 23.10.2002 and secured an interim order on 24.10.200 2 to the effect that one seat shall be kept vacant till the disposal of the writ petition. The petitioner subsequently filed an application for expeditious disposal of the writ petition, wherein an order was passed in January 2003 listing the matter for hearing during the month of August, 2003. It is obvious that the High Court was not in a position to take up the matter before August, 2003 because of extreme pressure on the judicial time of the court. (It has to be remembered that during those days about 30% of the posts in the High Court were lying vacant).

4. In the aforesaid undisputed background, the question which has been posed by the petitioner is . . . What was the mistake of the petitioner and why she was not admitted atleast against the payment seat.

5. The petitioner in the writ petition has narrated as to how with much difficulty and much more expenditure she came to Chennai to attend the counseling scheduled to be held on 29.9.2002 at 3.00 PM., as indicated in the advertisement which was published in the newspaper in the morning of 29.9.2002 (This is not a typographical mistake). To repeat, publication in the newspaper was on 29.9.2002 and the students have been advised to attend the counseling at Chennai on the same day on or before 3.00 PM! In the advertisement it was solemnly declared that those who fail to attend shall not

be considered subsequently. The petitioner has stoutly asserted that she attended the counseling on the said date. Xerox copies of the Airline tickets as well as the boarding pass of the petitioner and her father have been filed. Similarly xerox copy of the counseling application bearing Registration No.4105 with all necessary enclosures including the xerox copy of the draft for Rs.70,000/- have been filed. These documents, genuineness of which had not been doubted either at the time of filing counter or subsequently at the time of hearing, clearly point out that the petitioner had attended the counseling on 29.9.2002. However, a dispute has been raised by the respondents in the counter. It is stated

 . . . On verification of the counseling forms issued to the students it was found that she has not registered her name for open counseling for BDS payment seat. Hence the contention of the petitioner is not correct and her claim cannot be considered. The candidates who remained of counseling were placed in the wait list at their turn for consideration for future vacancies, if any, arises (sic). The remaining waitlisted candidates maintained on 29.9.2002 were allotted BDS payment seats on 10.10.2002 and 14.10.2002. As there were BDS free seat vacancies another counseling was conducted on 7.10.2002 by call letters on merit basis and following the rule of reservation. A separate open counseling for BDS vacant free seats was conducted on 14.10 .2002 and the free seats were allotted according to the community rank. The petitioner attended the open free seat counseling on 14.10.20 02 and her rank in the merit list was 267. The seats were allotted following rule of reservation. The cut off mark of the last MBC candidate selected was 282.36 whereas the petitioner had scored only 238.8 6. Further there were 19 candidates above the mark of the petitioner in merit list in the MBC category. Hence she could not have been selected for BDS free seat.

6. As already indicated, there is no longer any dispute that no student secured lesser mark than the petitioner had been admitted against any free seat, but the question remains as to why the petitioner has not been offered the payment seat. The contention in the counter that the petitioner had not registered her name for BDS payment seat has to be taken with more than a pinch of salt. As already indicated, a copy of the draft for Rs.70,000/-, which w as required for consideration against the payment seat, is on record, and therefore, the contention that the petitioner had not offered to take admission against payment seat is without rhyme or reason. In this setting, there cannot be any escape from the conclusion that the petitioner should have been given an opportunity to take admission against the payment seat.

7. As usual, in such matters, learned counsel for the respondents raised the contention that the question related to selection for the year 2002-2003, which being over, the writ petition has become infructuous and no relief can be granted to the petitioner. I am unable to accept such a contention in view of the peculiar facts and circumstances of the case. First of all, as already noticed, the inevitable delay in dealing with such matters is on account of inability of the High Court to list and hear such matters promptly, obviously due to docket explosion and pressure-cooker situation.

The fact that sizeable number of vacancies had remained unfilled has only compounded the miserly of litigants. The petitioner has been pursuing the matter with all diligence and not even one per cent of the blame lies on her. In such a scenario, if it is found that a grave injustice has been done to the petitioner, it would be only a mockery of justice to deny the privilege of getting admission on technical plea that the year of admission has come to an end and the admission for the next year has already commenced. A seat has been kept vacant as per the order of this Court.

8. Keeping in view the facts and the exceptional circumstances, I am of the considered opinion that the petitioner should be given admission against a payment seat either against any vacant seat available for this year or by increasing the number of seats by one. In case the vacant seat for the present year is available, there is no difficulty in offering admission to the petitioner against a payment seat. However, if no vacant seat is available, one seat should be increased and necessary letter seeking permission from Dental Council and other appropriate authorities should be made by the respondents 1 and 2. This is the minimum which can be done to mitigate the just grievance of the petitioner, who had already lost valuable one year of her budding career, for no apparent fault on her part.

9. Next comes the question as to how to improve the situation. Various doubts have been seriously raised by the petitioner regarding the bonafides of the present system and even allegations have been made regarding corruption. Without entering into uncharted ocean of such allegations, certain relevant questions crop up.

10. A perusal of the counter affidavit indicates that for free seats counsellings were undertaken on 10.7.2002, 19.9.2002 and 29.9.2002 and for payment seats counsellings were held on 10.7.2002, 27.7.2002, 3.8.2002, 19.9.2002, 25.9.2002 and 29.9.2002. Subsequently, after 2 9.9.2002 counseling for free seat was made on 7.10.2002 and open counseling was done on 14.10.2002. Similarly, in respect of payment seat, open counseling was done on 10.10.2002 and 14.1.2002. Experience shows that on many occasions students without being sure about their chances for admission against free seats take admission against payment seats and subsequently when they become eligible for admission against free seats, complications arise and it become difficult for them to get refund of the amount as obviously reluctance is shown by the private run colleges to permit such students to seek transfer for admission against free seats and in obtaining the consequential refund. In this background, it would be appropriate for the authorities concerned to consider the question as to whether the selection for admission against free seats should be completed and only after such selection is over, the selection for admission against payment seats should be made.

11. The other question relates to adequacy and appropriateness of opportunity given to the students. In the present case, counseling on 29.9.2002 was made on the basis of an advertisement published in the newspapers in the morning of 29.9.2002. It is stated in the counter that many students all over the State had attended the counseling on 29.9.2002.

This only indicates that such students (including the present petitioner) had only prior knowledge that counseling would be held on 29.9.2002 so that they were already armed with necessary bank drafts and complete the journey plans. In the present case, the petitioner had come to Chennai from Madurai by undertaking air travel. How many students can afford to fly to Chennai and at any rate what would happen to the students who are far away from connecting Airports and what would happen to the students who are intellectually forward but economically backward. It is obvious that steps should be taken to avoid such a situation in future and a rea sonable time should be given to the students to complete the necessary formalities for obtaining bank drafts or other documents as well as to complete the journey. In this context, the stand taken in the counter affidavit that the results are also updated in the website sounds hollow because inspite of so much hype about internet, website and e-governance, vast majority of the population is still beyond the reach of such facilities either because of the logistics involved or because of the economics involved.

12. For the aforesaid reasons, the writ petition is allowed and the respondents 1 and 2 are directed to hold the counseling and finalise the matter relating to admission as per the direction contained earlier within a period of 30 days from the date of receipt of the order. No costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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To

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rep. by its Secretary to Govt.,
Department of Health,
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Chennai 600 009.

2. The Secretary of Selection Committee,
Directorate of Medical Education,
Madras Medical University,
Kilpauk, Chennai 600 006.

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